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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,341	09/23/2003	GREGORY A. KAEPP	201-0904CIP-81091467	2340
32242	7590	11/30/2004		
DYKEMA GOSSETT PLLC 2723 SOUTH STATE STREET SUITE 400 ANN ARBOR, MI 48104				
			EXAMINER HURLEY, KEVIN	
			ART UNIT 3611	PAPER NUMBER

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/605,341

Applicant(s)

KAEPP ET AL.

Examiner

Kevin Hurley

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 33-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-9,13-15,17,19-21,25 and 27-29 is/are rejected.
- 7) ☒ Claim(s) 3-5,10-12,16,18,22-24,26 and 30-32 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. The use of the phrase “adapted” has been noted in the claims. It has been held that the recitation that an element is “adapted” is not a positive limitation but only requires the ability to perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138 (CCPA 1946).
3. The claims include the use of the word “for” which indicates intended use. A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

If Applicant(s) desire to give the phrase patentable weight, the Examiner respectfully recommends Applicant(s) remove “for” from the phrase where intended use is not desired.

4. Claims 1-2, 6-9, 13-15, 17, 19-21, 25, 27-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Fulkerson.

Fulkerson discloses a bumper assembly for a motor vehicle comprising: a bumper structure comprising a bumper beam 16 adapted for attachment to a frame of a motor vehicle; a hitch receiver 20 attached to said a bumper beam, a bumper cover 30 for concealing said bumper beam having an opening for accessing said hitch receiver; and an access door 42 for selectively concealing said hitch receiver, with said access door being mounted to said bumper structure such that said access door is movable from a closed position in which said access door closes said opening such that said hitch receiver is concealed, to an open position in which said hitch receiver is accessible and said access door is stored, with said access door remaining kinematically retained to said bumper structure in both said closed position and said open position, wherein said access door is hingedly mounted to said bumper cover about a generally horizontal axis.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fulkerson in view of Holka et al.

Fulkerson discloses the claimed invention except the hinge is not disclosed as being a living hinge.

It is known in the art, as shown by Holka et al., to provide a member 15 hinged to a bumper 12 by a living hinge 22. Such a hinge allows the entire bumper and hinged member to be molded as a single piece.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Fulkerson by using a living hinge, in view of Holka et al., in order to allow the bumper and door to be molded as a single piece.

Allowable Subject Matter

8. Claims 3-5, 10-12, 16, 18, 22-24, 26, 30-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments filed 29 September 2004 have been fully considered but they are not persuasive.

Applicant has argued that Fulkerson does not teach a bumper beam having a hitch receiver attached to the bumper beam. However, Fulkerson does indeed disclose a bumper beam 16 (referred to in Fulkerson as "crossbeam") having a hitch receiver 20 attached thereto. Applicant's claim in no way differentiates its "bumper beam" from the "crossbeam" in Fulkerson. Applicant also argues that Fulkerson does not teach a bumper cover concealing the bumper beam and having an opening for accessing the hitch receiver. It is noted that the claim 1 only recites that the cover is "for" covering and "for" accessing the hitch receiver, which is merely intended use. Nevertheless, Fulkerson's cover 30 clearly covers the bumper beams and hitch receiver and has an access opening (see Fig. 3 especially) having access to the hitch receiver. Applicant further argues that Fulkerson is attached to the frame of the vehicle at its ends by means of brackets 18 such that the hitch hangs under the bumper which is unlike that of applicant's claimed invention. Applicant has not pointed out any limitations in the claims which recite this connection. There are numerous recitations of "adapted" to be attached to a vehicle, however, this is not a recitation of an actual connection to the vehicle. It has been held that the recitation that an element is "adapted" is not a positive limitation but only requires the ability to perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138 (CCPA 1946).

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Hurley whose telephone number is 703-308-0233. The examiner can normally be reached on Monday-Friday 9:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 703-308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kevin Hurley
Primary Examiner
Art Unit 3611

November 24, 2004